

Brown's testimony re ARRCOM
Tacoma &
Rathbun

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BEFORE THE ENVIRONMENTAL PROTECTION AGENCY
UNITED STATES OF AMERICA

In re: ARRCOM, INC.

Docket No. X83-04-01-3008
and X83-04-02-3008

SWORN STATEMENT OF MICHAEL JOSEPH BROWN

APPEARANCES:

For the Agency:

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Regional Counsel, Environmental
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Avenue, Seattle, Washington
98174

For Warren Bingham:

STEPHEN NAVARETTA, Esq.,
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BE IT REMEMBERED, that on Thursday, January 17,
1985, at the hour of 2:15 o'clock p.m., at the offices of
the Environmental Protection Agency, 12th Floor, 1200 Sixth
Avenue, Seattle, Washington 98174, before Clarence Gwynn
Adams, Notary Public in and for the State of Washington,
personally appeared Michael Joseph Brown, the witness herein;

WHEREUPON, the following proceedings were had
and testimony given, to-wit:



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1 MICHAEL JOSEPH BROWN,

being first sworn to testify
to the truth, the whole truth
and nothing but the truth by
the Notary, testified on his
oath as follows:

2
3
4
5 MR. ELSEN: For the record, I'd like to state
6 my name is D. Henry Elsen, and I represent the United
7 States Environmental Protection Agency. This is a
8 deposition to perpetuate the testimony of Mr. Michael
9 Brown, an employee of the EPA.
10

11 DIRECT EXAMINATION

12 BY MR. ELSEN:

13 Q. Could you state your full name?

14 A. My name is Michael Joseph Brown.

15 Q. Have you ever been deposed before?

16 A. No, I haven't.

17 Q. Do you understand that if you do not understand a
18 question you can stop me and ask me to repeat it
19 or ask me to rephrase it?

20 A. O. K.

21 Q. The same will go for any questions asked by Mr.
22 Navaretta.

23 Do you understand that you are under oath and
24 have sworn to answer truthfully and fully?

25 A. Yes.

1 Q. Could you state your address please?
2 A. My home address?
3 Q. Yes.
4 A. (b) (6)
5 Q. How long -- are you employed?
6 A. Yes.
7 Q. How long have you been employed?
8 A. I have worked for the EPA since October of '79.
9 Q. What has your job been for the EPA?
10 A. I have been an Environmental Engineer.
11 Q. What is your educational background?
12 A. I have a Master's Degree in Environmental Engineer-
13 ing; I have a Master's Degree in Radiological
14 Sciences and a Bachelor's Degree in Zoology.
15 Q. What is your title here at EPA?
16 A. Environmental Engineer.
17 Q. How long have you held the position at EPA?
18 A. Since October of '79.
19 Q. What specific branch do you work in at EPA?
20 A. I work in the Waste Management Branch, the section
21 I work in presently is the RCRA Permit Section.
22 Q. And does RCRA stand for Resource Conservation and --
23 A. (Interrupting) Recovery, yes.
24 Q. Are you leaving the employment of the EPA?
25 A. Yes, I am.

1 Q. When?

2 A. (b) (6)

3 Q. And can you briefly describe your reasons for

4 leaving?

5 A. (b) (6) 1, the

6

7 Q. In the course of your duties at EPA, have you in-

8 vestigated alleged violations of RCRA occurring

9 at Rathdrum, Idaho, and Tacoma, Washington?

10 A. Yes.

11 Q. Have you been the main Investigator of this action?

12 A. Yes.

13 Q. Have you been the Custodian of all records of this

14 action?

15 A. I have had them on my desk and in our filing system,

16 so if that means Custodian, yes.

17 Q. Are these records located in the office area where

18 you are located?

19 A. Yes.

20 Q. And are you primarily responsible for the records?

21 A. Well, actually the branch is responsible for the

22 records. Our branch where I work are responsible

23 for the records, and I use their system, so I per-

24 sonally am not responsible, but the branch is.

25 Q. Have you reviewed the records in these two actions

1 prior to this deposition?

2 A. Yes.

3 Q. Were those records altered in any manner that you

4 know of?

5 A. No, I did not see any.

6 Q. Directing your attention to the investigation of

7 the site at Tacoma, Washington, do you know of an

8 investigation concerning the site in Tacoma?

9 A. Yes.

10 Q. Can you give the address of that site?

11 A. Yes, I can, 1930 C Street.

12 Q. Did there come a time in the investigation of the

13 site when you met with the owners -- excuse me,

14 strike that.

15 Have you investigated this site?

16 A. Yes.

17 Q. What was your first field trip to the site?

18 A. It was June 9, 1982, to the site, the first one.

19 Q. What was the purpose of that trip?

20 A. It was along with the Washington Department of

21 Ecology, and it was a joint RCRA inspection.

22 Q. Could you describe what an inspection is?

23 A. An inspection is to go to the site and to look

24 around to ask for required documents that they are

25 supposed to have at the site, and we usually use

1 a checklist, where we go down and see if they are
2 in compliance with the Regulations as promulgated
3 by EPA.

4 Q. Could you describe what you saw when you began
5 the inspection on 6-9-82?

6 A. O. K. I arrived -- I'll have to look at my notes.
7 I arrived around nine-thirty with Will Abercrombie.

8 MR. NAVARETTA: Excuse me, Mr. Brown, I'd
9 like to voir dire the witness here. I'd like to know
10 what he is saying.

11
12 VOIR DIRE EXAMINATION

13 BY MR. NAVARETTA:

14 Q. Mr. Brown, do you have any independent recollection
15 of the -- by which you can answer that question
16 without referring to your notes?

17 A. Yeah, I can be more general. I can't be specific
18 as to the time that I came there.

19 MR. ELSEN: Why don't we -- I do have a sugges-
20 tion; why don't we put the records away. If anything
21 specific comes up in the records I can lay a foundation
22 for the records.

23 DIRECT EXAMINATION - Continued

24 BY MR. ELSEN:

25 Q. Again, could you describe in general what you saw

credentialed presentation
inspection before presentation

1 when you went to the site at 1930 C Street?

2 A. O. K. I arrived early in the morning with Will
3 Abercrombie. We were there about twenty minutes
4 before anybody came. The site was locked up.
5 There was a small building there in place, which
6 they used as an office. It was locked, but we
7 looked around a little bit, there was a place that
8 there appeared to be underground storage tanks.
9 Also there was a fenced area toward the rear of
10 the yard that was a storage area, that had some --
11 it was concrete and it had an overhang, and it was
12 fenced and it had a guard dog in there.

13 Q. How many buildings were on the site?

14 A. There was just one office building, and as I said,
15 there was a storage shed area that was open on one
16 side.

17 Q. Were the storage tanks outside the building?

18 A. No, they were underground.

19 Q. How did you --

20 A. (Interrupting) And not near the buildings at all.

21 Q. How did you know there were storage tanks there?

22 A. Well, they had some transfer pipes coming up in
23 the middle, and also you could see that there were
24 plates that they picked up and put the oil in the
25 underground tanks.

1 Q. What happened next?

2 A. We walked the site one time, slowly, and Terry

3 Drexler arrived twenty minutes or a half-hour later.

4 He opened up the building, we went in and we talked

5 in the office area there. Once we got inside the

6 building there was an anteroom, which it was a

7 small laboratory that they had there, and we went

8 into the office area and talked, Will Abercrombie

9 and me and Terry Drexler.

10 Q. I am sorry, I am going to stop you here, who was

11 present at the inspection?

12 A. Will Abercrombie, me and also Terry Drexler.

13 Twenty minutes after Terry Drexler came, also

14 David Drexler came. He was not involved. He was

15 in the other room and he didn't actively partici-

16 pate.

17 Q. Referring again to the 6-9-82 inspection, what did

18 you do with Terry Drexler?

19 A. We spent the first part of the inspection just

20 talking to him about the sites that the Drexlers

21 ran in general, which are four different sites.

22 Then we got into the inspection part of it. We went

23 through the checklist, and Will Abercrombie carried

24 that part of it. I was a spectator.

25 Q. Now let's go back to the initial meeting with Terry

1 Drexler where you discussed the site.

2 A. O. K.

3 Q. What exactly was said in that conversation?

4 A. O. K. He described his family's operations. His

5 father ran the Woodland site, also the Rathdrum

6 site, two of his brothers were at each of those

7 sites, Tommy Drexler being at Rathdrum and David

8 being at Woodland. He stated that at the Tacoma

9 site that his father had ran it in the past, but

10 that he was taking it over, he was subleasing from

11 George Drexler, his father.

12 George, and Wally are the same person, Wally

13 being a nickname.

14 Q. He stated at that time that he had subleased the

15 facility?

16 A. Yes.

17 Q. What else did you discuss?

18 A. We asked for records, which he didn't have any at

19 the site. We asked for plans that were required

20 by RCRA which he did not have. We asked if he had

21 other waste on sight, he said no, that he only had

22 waste oil.

23 Will Abercrombie stated at the time that some

24 of the screening, that is the process of reclaiming

25 waste oil, could be hazardous waste, and that

1 testing should be done before he started operations.

2 Q. Then what happened?

3 A. After he finished talking, we walked the site with
4 Terry Drexler. He showed us the tanks. Will
5 Abercrombie was concerned that there was spillage
6 around the tanks and that also the tanks had not
7 been pressure tested in the recent past.

8 MR. NAVARETTA: I am going to reserve or make
9 an objection in the record now, hearsay, as to what Mr.
10 Abercrombie said or did.

11 MR. ELSEN: Objection noted.

12 Q. (By Mr. Elsen) Could you describe the tanks that
13 you saw?

14 A. I didn't actually see the tanks. I just saw the
15 port of entry of the tanks.

16 Q. Could you describe the ports that you saw?

17 A. O. K. They were under the ground, around two to
18 three feet and had a cap, a metal cap, and I can't
19 remember who took the top off, but I think it was
20 probably Terry Drexler, he took the cap off and
21 Will Abercrombie took a sample from one of the
22 tanks.

23 Q. You saw Will Abercrombie take a sample from the
24 tank?

25 A. Yes.

1 MR. NAVARETTA: May I have a continuing objec-
2 tion. Excuse me.

3 MR. ELSEN: Objection noted.

4 Q. (By Mr. Elsen) Did Terry Drexler show you the waste
5 oil treatment process at the facility?

6 A. He did not show us that at this time.

7 Q. What else did you see at this inspection?

8 A. There was a building which was down gradient from
9 the parking area there, which had some curves, and
10 Will Abercrombie told Terry Drexler he was concerned
11 about runoff from the facility for rainwater, that
12 hazardous waste would run off into the nearby
13 buildings and also into the street.

14 MR. ELSEN: I am now going to show the witness
15 certain documents. For convenience I would like to
16 refer to these documents as they were numbered in our
17 exchange of documents, if the Reporter will so note.

18 I am showing the witness what is marked as
19 EPA Exhibit 8-Tacoma.

20 Q. (By Mr. Elsen) Do you recognize that document, Mr.
21 Brown?

22 A. Yes, I do.

23 Q. Is that a document prepared by you?

24 A. Yes, it is.

25 Q. Is it a document that is normally prepared by you

curbs²₆

1 in the course of an investigation?

2 A. Yes.

3 Q. Is it a document relating to the 6-9-82 inspection

4 of the Tacoma facility?

5 A. Yes.

6 Q. When was this document prepared?

7 A. I am not sure of the exact date that it was pre-

8 pared, but it was shortly after the inspection.

9 Q. Drawing your attention to the second paragraph of

10 that document, could you read the first sentence

11 for me please?

12 A. "ARRCOM leases this site but Terry Drexler Enter-

13 prises (TDI) is subleases from ARRCOM which is owned

14 by Wally Drexler".

15 Q. Thank you.

16 A. That "Is" shouldn't be there, it should just be

17 "Subleases".

18 Q. Thank you. What happened after this inspection?

19 Did you leave the site?

20 A. Yes, I left the site after this inspection.

21 Q. How many samples were taken at this inspection?

22 A. I just recall one sample being taken.

23 Q. Showing the witness what is marked EPA Exhibit 9-

24 Tacoma, do you recognize this exhibit?

25 A. Yes, I do.

1 Q. Is it a document prepared by you?
2 A. Yes.
3 Q. Is it a document normally prepared in the course
4 of an investigation?
5 A. Yes.
6 Q. Could you describe the document?
7 A. It's a memo to some of the people in the Waste
8 Management Branch which describes the Drexler
9 family and some of the sites that they own.
10 Q. Does this document indicate who the operator of
11 the Tacoma facility was?
12 A. Yes.
13 Q. Could you say, reading from the document, could you
14 say who that is?
15 A. It says Terry Drexler, Operator.
16 Q. Are there other names listed as operators of the
17 site?
18 A. No, just Terry Drexler.
19 Q. O. K.
20 MR. NAVARETTA: Are you going to be offering
21 these or are these just exhibits that are --
22 MR. ELSEN: (Interrupting) I will be offering
23 them at the hearing, yes.
24 MR. NAVARETTA: O. K. Let me ask him about
25 this.

1 No, let me ask you, is Tacoma
2 Exhibit 9 going to be admitted solely on Tacoma?

3 MR. ELSEN: No.

4 MR. NAVARETTA: It's going to be also on Rath-
5 drum?

6 MR. ELSEN: That's correct, and I intend to ask
7 questions later about this document when we get into the
8 Rathdrum Investigation.

9 MR. NAVARETTA: O.K., well then I'll raise the
10 objection then.

11 MR. ELSEN: Very well.

12 Q. (By Mr. Elsen) Showing you next what is identified
13 as EPA Exhibit 12-Tacoma, do you recognize this
14 document?

15 A. Yes.

16 Q. Could you describe the document?

17 A. Yes. It is a phone memo from me to Hazel Drexler
18 who is the wife of Wally Drexler.

19 Q. When you say "From me to Hazel", what does that
20 indicate?

21 A. That means I called her.

22 Q. Is this a document that you normally prepare in the
23 course of an investigation?

24 A. Yes, it is.

25 Q. When did you prepare this document?

1 A. I am not sure of the exact date, but it was probably
2 the same day that I made the telephone call which
3 is 7-1-82.
4 Q. Thank you.
5 Showing the witness what is identified as
6 EPA Exhibit 16-Idaho, do you recognize this docu-
7 ment?
8 A. Yes.
9 Q. Could you describe the document?
10 A. This is a memo from me to some members of the Waste
11 Management Branch, and it comments on the Drexler
12 Family and also the sites that they own in Region Ten.
13 Q. Does this information indicate who the Operator of
14 the Tacoma facility was?
15 A. Yes.
16 Q. What does it indicate?
17 A. It says Terry Drexler.
18 Q. Thank you.
19 MR. NAVARETTA: May I ask a question on that?
20 MR. ELSEN: Yes.
21
22 VOIR DIRE EXAMINATION
23 BY MR. NAVARETTA:
24 Q. Isn't that the same as nine in large part, isn't
25 16-Idaho the same 9-Tacoma, with some additions?

1 A. Yes, it is.
2 Q. You didn't re-do, you didn't, write out from the
3 beginning, Exhibit 13?
4 A. I put some more things on it.
5 Q. O. K. For instance the other companies, "TAD equals
6 Tommy and David, and WH equals Wally and Hazel",
7 that is an addition?
8 A. Yes.
9 Q. Can you point any other additions, or are they are
10 circled?
11 A. I am not sure they are all circled, but there is
12 some on the back of that that is circled. On the
13 front I see Hazel as the mother, which is new to
14 this one.
15 Q. O. K.
16 A. And also down at the bottom, Herbert Nagel, he was
17 Warren Bingham's lawyer in Coeur D'Alene, Idaho.
18
19 DIRECT EXAMINATION - Continued
20 BY MR. ELSEN:
21 Q. When was this document prepared?
22 A. Well, it was added to shortly after 6-22-82. I
23 don't know the exact date, but shortly after that.
24 Q. Why was it added to?
25 A. On 6-22-82 we had a meeting with Warren Bingham

1 at our office here in Region Ten. George Hofer,
2 he is my boss, and Warren Bingham and myself were
3 at this meeting.

4 Q. What -- how does that meeting tie in with this
5 document?

6 A. From that meeting we got more information about the
7 Drexler family and about sites they owned, they
8 owned or operated.

9 Q. And then you added this material to that document?

10 A. Yes.

11 Q. Did you do that shortly after the Warren Bingham
12 meeting of 6-22-82?

13 A. Yes, I did.

14 Q. Did you have another occasion to visit the 1930
15 C Street facility?

16 A. Yes, I did.

17 Q. Who went with you at that time?

18 A. George Hofer went with me, from EPA.

19 Q. Who is George Hofer?

20 A. He is the Chief of the RCRA Permit Section right now,
21 but at that time he was Chief of the RCRA Permits
22 and Complaints Section.

23 Q. When did this occur?

24 A. It was July 15, 1982.

25 Q. Did you meet any of the Drexler family there?

1 A. Yes, I met -- Wally Drexler was there, Terry Drexler
2 was a little late for the meeting, was there, also
3 David Drexler was there and he was in the anteroom
4 again, and he was not an active participant. Also
5 Will Abercrombie from the State was there.
6 Q. What is Will Abercrombie's position?
7 A. He is an Inspector with the Washington Department
8 of Ecology, located in Tumwater, Washington.
9 Q. What happened at that meeting?
10 A. Let's see, O. K. -- once again, we had a chance to
11 ask them for their records and the plans that they
12 had there at the site, and at that time we first
13 heard that the files from the Woodland and Rathdrum
14 sites were impounded by the FBI. Will Abercrombie
15 stated again that in order for them to start
16 operating as a TSD Facility, that he had to test the
17 shaker screen particles.
18 Q. What did you see at the inspection?
19 A. We had the meeting inside the building. After the
20 meeting took place we walked the site with Terry
21 Drexler, also David Drexler was with us for a part
22 of the walk. Terry Drexler took us up near the
23 fence there which he -- where the guard dog was,
24 and those three-sided buildings with the roof before,
25 as I noted on the site, and showed us a machine that

1 was operating, it was a heater, it heated up the
2 oil so that he could run it through the shaker
3 screen process.

4 Q. Did he explain the purpose of the heating machine?
5 A. Yes.

6 Q. What was that purpose?
7 A. It was to separate the oil from the water.

8 Q. What else did you see in the vicinity of the heater?
9 A. There was a guard dog and some mechanized equipment
10 there, piping, fixtures and other things.

11 Q. Did you see a shaker screen there?
12 A. I can't remember I saw a shaker screen at that site.

13 Q. Did you see other oil processing equipment there?
14 A. Outside of pipes and the machine that heated the oil
15 I can't say that I did.

16 Q. What else did you do there?
17 A. We walked the entire site. We looked at the under-
18 ground tanks, their ports, and we went home after
19 that.

20 Q. Did you take any samples at this time?
21 A. No, we didn't take any samples.

22 Q. Showing the witness what is marked as EPA Exhibit
23 13-Tacoma, can you identify this document please?
24 A. Yes. It's a memo to the file from me and it's a
25 trip report for that inspection.

1 Q. Does it describe what happened at that inspection?

2 A. Yes, it does, in general.

3 Q. Is this a type of report that you made during the
4 normal course of an investigation?

5 A. Yes.

6 Q. Is it a report that was made at or near the time
7 of the investigation?

8 A. Yes.

9 Q. O. K.
10

11 VOIR DIRE EXAMINATION

12 BY MR. NAVARETTA:

13 Q. On this Exhibit 13-Tacoma, the purpose of that
14 exhibit -- I am sorry, the purpose of the visit was
15 reporting, and that was to report an investigation
16 at Tacoma?

17 A. Yes.

18 MR. NAVARETTA: Thank you.
19

20 DIRECT EXAMINATION - Continued

21 BY MR. ELSEN:

22 Q. Was there any other reason for you to visit the
23 site on that day?

24 A. We were interested in finding out about the other
25 Drexler Facilities in Woodland and Rathdrum, and

1 also Terry Drexler's facility here in Seattle.

2 Q. Did you find out information on that date about

3 those other facilities?

4 A. Yes. At Rathdrum we found out who the previous

5 owners of the site were.

6 Q. Who told you that information?

7 A. It was told to us by George Drexler.

8 MR. NAVARETTA: Move to strike the ownership

9 information testimony, based on hearsay; objection.

10 MR. ELSEN: Objection noted.

11 Q. (By Mr. Elsen) Did you have occasion to find out

12 the results of the sampling done on 6-9-82?

13 A. Yes.

14 Q. What were the results of those samples?

15 A. O. K., from Will Abercrombie I got a lab report and

16 there were noted some hazardous waste constituents.

17 Q. Was there any information on flash point of the oil?

18 A. Yes.

19 Q. Could you explain that information?

20 A. The flash point of the liquid in the tanks, was less

21 than 140 degrees Fahrenheit.

22 Q. Is that a significant figure, Mr. Brown?

23 A. Yes.

24 Q. In what way?

25 A. Well, according to EPA Regulations it is a hazardous

1 waste, fluid is a hazardous waste if it is below
2 that point, characteristic of hazardous waste.

3 Q. What are the characteristics?

4 A. Inflammability -- no, actually it's ignitability.

5 Q. Were there other chemicals found?

6 A. Yes.

7 Q. Could you name those?

8 A. I would need the laboratory sheet to do that.

9 Q. Showing the witness what is marked EPA Exhibit 7-

10 Tacoma, is that the lab report you referred to?

11 A. Yes, it is.

12 Q. Directing your attention to Page Four of the Lab

13 Report --

14 A. (Interrupting) Starting where?

15 Q. Of the letter at Page One, actually Page Three of

16 the Lab Report itself.

17 A. O. K.

18 Q. What are the chemicals indicated with circles?

19 A. O. K., naphthalene, bis (2-ethylhexyl) phthalate.

20 The third one is di-n-octyl phthalate.

21 Q. Was tuolene found at the site?

22 A. Yes.

23 Q. Was ethyl benzene found at the site?

24 A. Yes.

25 Q. Was methyl chloride found at the site?

1 A. No, methylene chloride was found at the site.

2 Q. Excuse me, methylene chloride, was that found
3 at the site?

4 A. Yes.

5 MR. NAVARETTA: By site, you are referring to
6 Tacoma?

7 THE WITNESS: Yes.

8 Q. (By Mr. Elsen) Are those subsequent hazardous
9 wastes under regulations promulgated in accordance
10 with RCRA?

11 A. Yes, those three substances are.

12 Q. Showing the witness what is marked EPA Exhibit 6-
13 Tacoma, do you recognize this document?

14 A. Yes.

15 Q. Could you describe the document?

16 A. It's my Inspection Report for the Tacoma Facility,
17 including both 6-9-82 inspection and 7-16-82 inspec-
18 tion.

19 Q. Is this a report that you normally prepare in the
20 course of an investigation?

21 A. Yes.

22 Q. Is this a report that you prepared at or near the
23 times of the two inspections in question?

24 A. Yes, it was completed sometime after 7-15-82.

25 I am not sure of the exact date, but shortly after.

1 Q. Was it prepared at the time that you were certain
2 of the facts that you found at the Tacoma site?
3 A. Yes.
4 Q. For clarity's sake, this report does refer to the
5 1930 C Street site in Tacoma, Washington?
6 A. Yes.
7 Q. Does it indicate that the up ridge site transports
8 hazardous wastes?
9 A. Transport hazardous waste -- let me check.
10 MR. ELSESEN: I refer the witness to Page One
11 of the report.
12 A. O. K. Yes, it is marked yes, transports hazardous
13 waste.
14 Q. (By Mr. Elsen) Does the report indicate that the
15 owners and operators of the facility treat, store
16 or dispose of hazardous wastes?
17 A. Yes.
18 Q. Would you describe what your investigation revealed
19 about the site security at the site?
20 A. It did not have much security. The door of the
21 building they used as an office was locked. There
22 was a fence at least partially around the site.
23 There was two driveway entrances to the site. There
24 were some gates, but they could not be locked.
25 Q. Is this a violation of RCRA Regulations concerning

1 site security in your opinion?

2 A. Well, the question here is do they need that much

3 security on the site, and they probably don't need

4 a fence, with the underground tanks at that site.

5 Q. Is there anything indicated on the report about

6 flash point of oil found there?

7 A. Yes.

8 Q. Where is that indicated?

9 A. On Page Two of that report.

10 Q. Is there anything indicated in this report about

11 precautions to minimize danger of this ignitable

12 waste?

13 I'll withdraw that question.

14 Mr. Brown, you inspected the 1930 C Street site

15 on two occasions?

16 A. Yes.

17 Q. You took samples on one of those occasions?

18 A. Yes.

19 Q. Those samples revealed the presence of hazardous

20 waste?

21 A. Yes.

22 Q. To your knowledge was a permit ever issued by the

23 EPA to operate a hazardous waste site under Regula-

24 tion or Statutes?

25 A. No.

1 Q. Was interim status ever given to that same site
2 for the handling of hazardous wastes?
3 A. No.
4 Q. Could you describe what a Class II violation is,
5 Mr. Brown?
6 A. Yes, a Class II violation is a violation against
7 the Statute, as opposed to a Regulation promulgated
8 by EPA.
9 Q. A violation of the Statute?
10 A. Yes, the law.
11 Q. Is this a factor you use in determining the amount
12 of penalties you set for violation, alleged viola-
13 tion?
14 A. Yes, it is.
15 Q. Is damage a factor that you stress in determining
16 the amount of penalties assessed for alleged viola-
17 tions of RCRA?
18 A. Yes.
19 Q. How is that damage classified as far as penalty
20 policy?
21 A. It's judged major, moderate or minor.
22 Q. Is conduct a factor used in determining civil
23 penalties -- excuse me, in assessing civil penalties
24 according to alleged violations by you?
25 A. Yes.

1 Q. What was the class of the violation here?
2 A. Class II.
3 Q. In your opinion?
4 A. Class II violation.
5 Q. And what was the damage?
6 A. It was major.
7 Q. Why do you say that?
8 A. It was major because it had a great impact on
9 human health and the environment, had a potential
10 impact.
11 Q. Does major include both actual and potential damage?
12 A. Yes.
13 Q. In this case, which did you think occurred?
14 A. As far as I know, it was just potential.
15 Q. What was the conduct rating given to this violation?
16 A. It was major.
17 Q. Why is that?
18 A. We had contacted the Drexler home on several occa-
19 sions, trying to get information and also a Part A
20 submittal from them, but we had not gotten a com-
21 pleted Part A Application.
22 Q. Do you have direct knowledge of efforts to obtain
23 that kind of documentation from the Drexlers?
24 A. Yes.
25 Q. Over how long a period?

1 A. Oh, from the file, it started late in 1981.

2 Q. Did you assess penalties for this violation
3 according to the three factors we have just dis-
4 cussed?

5 A. Yes.

6 Q. Thank you.

7 MR. ELSEN: At this time I'll move on to
8 questions concerning the Rathdrum site. Are there any
9 questions you have at this time?

10 MR. NAVARETTA: No, no, not at this time.

11 Oh, just one question, I am sorry.

12
13 CROSS EXAMINATION

14 BY MR. NAVARETTA:

15 Q. When you talked to all the information that you
16 recorded in these documents as a result of your
17 investigation, some of it came from your personal
18 observations, is that correct?

19 A. That's true.

20 Q. But for instance the ownership information contained
21 in these exhibits that you have reviewed at this
22 point were supplied by one of the Drexlers?

23 A. Also Warren Bingham gave me some information.

24 Q. But the Drexlers gave information?

25 A. They did.

1 Q. And for instance, in EPA Exhibit 9, Tacoma --
2 A. (Interrupting) O. K.
3 Q. And that document was prepared after a visit to
4 Tacoma, was it not?
5 A. True.
6 Q. And so the information there and responsible
7 parties, Warren Bingham, Owner, that information
8 would have been obtained from the record?
9 A. That's true.
10 Q. And then EPA Exhibit 16, Idaho.
11 A. 16?
12 Q. Yes.
13 A. O. K.
14 Q. Well, now I'll strike that.
15 And Exhibit EPA Exhibit 13, Tacoma, that was
16 also filled out after another visit to Tacoma?
17 A. O. K.
18 Q. And the previous owners of Rathdrum, on the bottom,
19 where it says that includes Bingham, that's informa-
20 tion that came from the Drexlers?
21 A. That's true.
22 MR. NAVARETTA: Thank you. I don't have any
23 other questions. I'd like to note at this time that
24 we'll object at this point, and when you formally offer
25 this to strike all the information contained in the

1 exhibits to this point containing ownership information
2 as violative of the Hearsay Rule, and especially in
3 particular the rule in Johnson versus Lutz, 253 New
4 York 124, 1930.

5 Thank you.

6
7 DIRECT EXAMINATION - Continued

8 BY MR. ELSEN:

9 Q. During your inspection of this C Street facility
10 in Tacoma, who was in charge of guiding you around
11 on those inspections?

12 A. It was Terry Drexler.

13 Q. Was there a reason for that?

14 A. He seemed in charge.

15 Q. When you say information about Mr. Bingham was
16 provided by the Drexlers, who specifically provided
17 that information?

18 A. It came from both Terry and also Wally Drexler.

19 Q. In your employment at EPA did you become aware of
20 alleged violations of RCRA at a site near Rathdrum,
21 Idaho?

22 A. Yes, I did.

23 Q. In the course of that investigation, did you have
24 occasion to meet with Mr. Warren Bingham?

25 A. Yes, I did.

1 Q. Where did you meet with Mr. Bingham?
2 A. In our Regional Office here, June 22nd, 1982.
3 Q. Who was present at that conference?
4 A. It was myself, George Drexler and Warren Bingham.
5 Q. Showing the witness what is marked EPA Exhibit 17-
6 Idaho, do you recognize this document?
7 A. Yes.
8 Q. Could you describe the document?
9 A. This is a memo to the file from myself on that
10 meeting with Warren Bingham.
11 Q. Is this a document that you prepare in the normal
12 course of an investigation?
13 A. Yes, it is.
14 Q. Meaning that when you have a conference you usually
15 transcribe what occurs, is that correct?
16 A. Well, we usually summarize what happens.
17 Q. Is this such a document?
18 A. Yes, it is.
19 Q. Is this a true and accurate copy of that document?
20 A. Yes, as far as I can tell.
21 Q. Is it your handwriting?
22 A. Yes, it is.
23 Q. Was it made at or near the time of the 6-22-82
24 conference?
25 A. Yes, it was.

1 Q. In this document -- could I have you read Line Nine;
2 is that clear to everyone here, starting with the
3 B, could you read that, please?
4 A. "Bought four pieces of property from Wally Drexler
5 in January, 1980. Two of these properties were
6 homes, two, Woodland and Rathdrum were waste re-
7 cycling plants".
8 Q. How did you come into possession of that information?
9 A. It was from Warren Bingham at that meeting.
10 Q. Did he describe the type of arrangement he had with
11 Mr. Drexler in relation to the Rathdrum site?
12 A. Yes. He said it was a sale lease-back agreement.
13 Q. Could you describe that to the best of your ability?
14 A. Well, I understand that he bought the property
15 from the Drexlers and then the Drexlers in turn
16 leased it back to him, paying him a certain amount
17 of money for that land.
18 MR. NAVARETTA: You mean from him rather than
19 to him?
20 Q. (By Mr. Elsen) Is that correct?
21 A. It was owned by Warren Bingham who leased it to
22 Wally Drexler.
23 Q. At this conference did Mr. Bingham indicate who was
24 in charge of the facility between 1980 and January 1,
25 1982?

1 Q. Who else was present at that visit?
2 A. Warren Bingham was present out there, I was there
3 and also Ken Babin from the Panhandle Health District.
4 Q. What was the purpose of your visit?
5 A. It was to conduct a RCRA inspection.
6 Q. Did you conduct such an inspection?
7 A. Yes, I did.
8 Q. Could you describe that inspection starting with
9 Step One, what did you do first?
10 A. O. K. My inspection was in parallel with Ken Babin's
11 inspection from the State, but we both did inspec-
12 tions.
13 Q. Who is Ken Babin?
14 A. He is from the Panhandle Health District.
15 Q. Where is that located?
16 A. Coeur D'Alene, I think, is the main office.
17 Q. Is he an employee of the State of Idaho?
18 A. I am not sure how it works in Idaho. He could be
19 an employee for the County, but he is contracted to
20 the State to RCRA inspections.
21 Q. What did you do first on this inspection?
22 A. We got there and we talked with everybody present.
23 We stepped over the entryway there which was a chain
24 with two posts, and we pretty much walked the
25 perimeter of the site. There is a road that circles

1 all the active parts of the site.

2 Q. Could you generally describe the condition of the

3 site?

4 A. It was in fairly poor shape.

5 Q. What do you mean by poor?

6 A. There were oil spills on the road as you walked

7 down the main road, there were containers over-

8 turned, there were tanks overturned; some of the

9 containers had black, tarry material that was

10 leaking on the ground. The largest storage tank

11 there was leaking from one of its seams. There

12 were trucks parked in the bush there that were

13 partially cannibalized, also some burned out, and

14 the active portions of the area, there was some

15 oily material ponding. We looked at -- looked in

16 all the buildings and I found no records present

17 there.

18 Q. Did you see any processing equipment?

19 A. Yes, I did.

20 Q. Do you have knowledge as to what this facility was

21 used for?

22 A. It was used for oil recycling and also solvent

23 storage, treatment processing.

24 Q. Did you see any oil processing equipment there?

25 A. Yes, I did.

1 Q. Was that equipment similar to the equipment you
2 saw at 1930 C Street in Tacoma?

3 A. Yes, there was a heating unit there for the waste
4 oil. It was mostly similar to the process equip-
5 ment that I saw in Woodland. They had a shaker
6 screen present there, a place where they stored
7 oil, a place where they heated oil up.

8 Q. Could you tell me what Woodland is?

9 A. Woodland is a site in Woodland, Washington, that
10 was leased by the Drexlers and owned by Warren
11 Bingham and it was a waste oil recycling site. It
12 was where they funneled all their reclaimed oil
13 to the Weyerhaeuser site. That was their main
14 station there.

15 Q. During your inspection did you take samples?

16 A. I took one sample and Athena Lalikos took the
17 remainder of the samples.

18 Q. You saw Ms. Lalikos take those samples?

19 A. I saw her take some of the samples.

20 Q. Did you see what she did with the samples after she
21 took them?

22 A. The ones I saw, she put in bottles; she labeled them,
23 she iced them down and put them in an ice chest, put
24 them in her truck.

25 MR. NAVARETTA: Move to strike as hearsay what

1 Ms. Lalikos did or said. Also not the best evidence.
2 Q. (By Mr. Elsen) Did you search for records at the
3 site?
4 A. Yes, I did.
5 Q. Where did you search for records?
6 A. We had Warren Bingham open up all the buildings
7 and we looked inside of them.
8 Q. How many buildings were there on the site?
9 A. There was at least two that I can recollect, one
10 being locked.
11 Q. Did your search for records find anything?
12 A. No.
13 Q. Were there records of a waste cycling or treatment
14 plan?
15 A. No, all the records were gone.
16 Q. What else did you do on this inspection trip?
17 A. I also took pictures of the site, and I recorded
18 my observations on the inspection chart.
19 Q. What did you do with the samples that you took?
20 A. I gave it to Athena Lalikos to process.
21 Q. And what did she do with it?
22 A. She put it in -- labeled it and put it in an ice
23 chest, and also recorded all the information.
24 Q. What else did you do at the inspection?
25 A. Hmmm -- when we left the site we went to Ken Babin's

1 office in Coeur D'Alene and we talked to Warren
2 Bingham about the possible violations as far as
3 RCRA was concerned, and about some of the other
4 environmental laws too.

5 Q. Was the site active at this time?

6 A. No.

7 Q. How could you tell?

8 A. Well, there was a chain across the entryway, first
9 of all. There was brush growing up in some of the
10 areas that you would expect -- that you would not
11 expect it to be growing if it was an active area.
12 There were overturned containers. On the active
13 area there, there was spilled material that I also
14 would not expect to find in an active area.

15 Q. Showing the witness what is marked as EPA Exhibit 20-
16 Idaho, do you recognize this document, Mr. Brown?

17 A. Yes.

18 Q. Could you describe the document?

19 A. It is our RCRA Inspection Checklist for that inspec-
20 tion.

21 Q. Is this a document you normally prepare in the course
22 of an investigation?

23 A. Yes.

24 Q. Is it a document you normally prepare when you inspect
25 a site?

1 A. Yes.

2 Q. Was this document prepared at or near the time of

3 inspection, that is 7-20-82?

4 A. Yes, shortly after that time.

5 Q. Addressing your attention to Page Two of the Report,

6 does that page indicate you found problems with

7 site security?

8 A. Yes.

9 Q. Could you describe those problems?

10 A. Well, as I mentioned before, the entryway just had

11 a chain across it. Also around the site, there was

12 a barbed wire fence, right around the entryway. It

13 was not continuous, but the barbed wire fencing was

14 approximately five feet tall, with three or four

15 strands of barbed wire.

16 Q. What do you mean by now continuous?

17 A. It didn't join the post where the chain was attached,

18 so of course we just walked around it to get in

19 there.

20 Q. Did the problems with the fencing look recent or

21 were they old?

22 A. They were old.

23 Q. By that you mean, what?

24 A. It looked like the fencing in place had been there

25 quite a long time, like in the order of years.

1 Q. Does Page Two of the Report indicate problems with
2 incompatible wastes?
3 A. No. Oh -- I have marked here, "Are there ignitable,
4 reactive or incompatible wastes on site".
5 Q. I am sorry, does your report indicate that precautions
6 were not taken to prevent accidental ignition or
7 reaction to ignitable or reactive wastes?
8 A. Yes.
9 Q. Could you describe that problem?
10 A. As I mentioned before, the two tanks were leaking
11 and there was spillage on the active area.
12 Q. How bad was that spillage?
13 A. It was really bad.
14 Q. Could you describe it in more detail?
15 A. What do I mean by -- O. K. Right around the shaker
16 screen area there was a ponding, several small
17 ponds. The ponds were about one to two inches
18 deep, maybe two to three feet across. O. K. On
19 some of the cemented areas there, there was an oil
20 flow sheen on that; from the largest tank on site,
21 which was some ways away from the active area there
22 was a leak on the seam about three or four feet up
23 above the ground and you could see it was leaking,
24 you could tell sight.
25 Q. Did these leaks and other problems look old or new?

1 A. Actually they looked like they had been taking place
2 on the order of months.

3 Q. Addressing your attention to Page Two and Three of
4 the Report, were there problems with communications
5 and other equipment and other precautionary equip-
6 ment?

7 A. Yes, the phone was not operational at the time I
8 was there.

9 Q. Do you have any knowledge that this phone was
10 operational prior to when you were there?

11 A. Yes. Ken Babin sometime in the past, I believe in
12 '81 had called the facility, so it was operational
13 at that time.

14 Q. Were there other problems with precautionary equip-
15 ment?

16 A. I didn't see any fire extinguishers on the site.
17 Also there was no plan -- no contingency plan.

18 Q. What is a contingency plan?

19 A. It is a plan which is required by RCRA for the
20 facilities to make up in order if there is an
21 emergency on site, such as an explosion or a fire
22 or a leak.

23 Q. Turning your attention to Page Five of the document,
24 do you indicate there, that there was not written
25 documentation of personnel training?

1 A. Yes.

2 Q. Just to reiterate, did you find any written material

3 at the site?

4 A. No, I did not.

5 Q. Did there come a time when you learned the results

6 of the samples that you took?

7 A. Yes.

8 Q. What did those samples reveal?

9 A. I would have to see a laboratory sheet there.

10 Q. Showing you what is marked as EPA Exhibit 21-Idaho,

11 do you recognize that document?

12 A. Yes.

13 Q. What is this document?

14 A. It was taken by Athena Lalikos when she was taking

15 her samples.

16 Q. What do you mean taken by Athena Lalikos? What is

17 this document?

18 A. It is her record of where she took her samples.

19 Q. Was this a report sent to you?

20 A. It was sent to me, although she sent it to the

21 PCB people directly, and I just got a copy of it.

22 She did not do this for me.

23 Q. Directing your attention to what is marked EPA

24 Exhibit 22-Idaho --

25 MR. NAVARETTA: (Interrupting) I'll state my

1 objection here; improper foundation, not the best evi-
2 dence, hearsay; no proper authentication.

3 Q. (By Mr. Elsen) Do you recognize the document?
4 A. Yes.

5 Q. What is this document?
6 A. It is the lab results from that inspection.

7 Q. Did you read both of these documents we just re-
8 ferred to?
9 A. Yes.

10 Q. Going back to Exhibit 22-Idaho, when you say lab
11 results, lab results from where?
12 A. It is from our EPA lab, which is located in Man-
13 chester, Washington.

14 Q. When you say "From our EPA lab", what does that
15 mean?
16 A. Our Region Ten Laboratories.

17 Q. Did you read these two reports?
18 A. Yes, I did.

19 Q. What did the reports reveal?
20 A. That on the site there was some hazardous waste
21 constituents.

22 Q. Were these listed hazardous wastes under regulations
23 promulgated according to the RCRA Statute?
24 A. Yes.

25 MR. NAVARETTA: Move to strike the testimony

1 on the results of Exhibit 22 based on hearsay objection,
2 not proper foundation, authenticity, and hearsay on
3 hearsay.

4 Q. (By Mr. Elsen) Do you have any independent know-
5 ledge that hazardous wastes were found at the site?

6 A. Independent? I know that hazardous waste was taken
7 to the site. I have no knowledge that hazardous
8 waste was at the site outside of this Laboratory
9 Report.

10 Q. I see. Showing you what is marked as EPA Exhibit
11 25-Idaho, do you recognize this document?

12 A. Yes.

13 Q. Is it indeed several documents?

14 A. Yes.

15 Q. How did you come into possession of this document?

16 A. It was sent to me by James Harris, who was an EPA
17 employee, Region Eight, at the Montana Office, which
18 is in Helena, Montana.

19 Q. Do you recognize the signature of Mr. Harris?

20 A. No, I have never seen it before.

21 Q. Directing your attention to Page Four of this exhibit,
22 what is that document?

23 A. It is a Hazardous Waste Manifest.

24 Q. Is that a document you are familiar with in the course
25 of your work?

1 A. Yes, I do see manifests.

2 Q. What is a manifest?

3 A. It is a document that tracks hazardous waste from

4 the generator to the TND Facility.

5 Q. What does this manifest indicate?

6 A. It says the Generator was Anaconda Aluminum Company,

7 which is located in Columbia Falls.

8 MR. NAVARETTA: Move to strike the testimony

9 of what it says. The document speaks for itself.

10 MR. ELSEN: Very well.

11 MR. NAVARETTA: And object to this exhibit on

12 improper foundation, lack of authenticity, hearsay

13 within hearsay; hearsay and general lack of reliability.

14 Q. (By Mr. Elsen) Directing your attention to what

15 is marked as EPA Exhibit 19-Idaho, do you recognize

16 this document?

17 A. Yes. It's my notes of the inspection of the Rathdrum

18 Facility.

19 Q. Is it the inspection of 7-20-82?

20 A. Yes.

21 Q. Is this a report that you made yourself?

22 A. Yes.

23 Q. Is it a report that you make in the normal course

24 of your business?

25 A. Yes, it is.

1 Q. Rather, in the normal course of your employment?

2 A. Yes.

3 Q. Could you describe what the report is?

4 A. It's just a trip report on what I did at certain
5 times on the inspection, where I walked when I
6 walked around the site, where I took pictures;
7 where some things were located at, what I saw there,
8 and also what I told Warren Bingham as far as
9 violations go. Also the sampling numbers that were
10 taken.

11 Q. Is that a true and accurate copy of the document?

12 A. Yes, to the best of my knowledge it is.

13
14 VOIR DIRE EXAMINATION

15 BY MR. NAVARETTA:

16 Q. Mr. Brown, did you type this yourself?

17 A. No, I didn't type it myself.

18 Q. Where is the original of this?

19 A. It should be in the file.

20 MR. NAVARETTA: All right. I don't believe it
21 was in the pre-hearing discovery admissions.

22 MR. ELSEN: I believe it was, Exhibit 19-Idaho.

23 MR. NAVARETTA: Oh. I see, I didn't recognize
24 this.

25 MR. ELSEN: My initial search of the files did not

1 find this document, so we'll continue to look for it.

2 MR. NAVARETTA: O. K. Well then I move this
3 is not a business record, this is something else, and
4 it is therefore hearsay, not properly authenticated, and
5 it's signed in no one's particular handwriting, therefore
6 I feel it lacks authenticity, proper foundation and it
7 is also hearsay.

8
9 DIRECT EXAMINATION - Continued

10 BY MR. ELSEN:

11 Q. Do you recognize this document, Mr. Brown?

12 A. Yes, I do.

13 Q. Do you know who typed this document?

14 A. Yes, I do.

15 Q. Did you dictate the document?

16 A. No, it was typed from my notes.

17 Q. Who typed the document?

18 A. Bill Hegbeth, I can try. H-e-g-b-e-t-h, something
19 like that.

20 MR. NAVARETTA: And also it's not the best evi-
21 dence for right now.

22 Q. (By Mr. Elsen) Mr. Brown, do you think this is an
23 accurate and true copy?

24 A. Yes, I do.

25 Q. Of the original document?

1 A. Yes.

2 MR. NAVARETTA: Move to strike as a leading

3 question.

4 MR. ELSEN: Pardon me?

5 MR. NAVARETTA: Move to strike as a leading

6 question.

7 MR. ELSEN: I'll go on.

8 Q. (By Mr. Elsen) Did you search records belonging

9 to George Drexler, Terry Drexler or various companies

10 that those two gentlemen headed?

11 A. Yes, I did.

12 Q. Could you tell me where you searched for documents?

13 A. At two different places. One was the documents

14 held by the FBI, I searched there.

15 Q. How did you gain access to those documents?

16 A. I have trouble with that one.

17 (DEPOSITION WAS TEMPORARILY

18 RECESSED WHILE WITNESS HAD

19 COUGHING SPELL.)

20 A. O. K. I didn't finish my other question.

21 Q. (By Mr. Elsen) How did you gain access to the FBI

22 records?

23 A. Our counsel here sought access from the U. S. Attor-

24 ney, and we gained access to look at the records.

25 Q. And where else did you search for records?

1 A. I went to George Drexler's accountant Atlee Foss*,
2 and I searched through his records and I found --
3 I didn't find anything in the records at all.
4 Q. Were those records made available pursuant to a
5 subpoena?
6 A. For Atlee Foss, I believe they were.
7 Q. Was a subpoena served upon Linda Drexler?
8 A. I understand there was a subpoena served on her.
9 Q. In the course of your search of records did you
10 find any financial assurance documents?
11 A. No, I did not.
12 Q. Can you explain what financial assurance documents
13 are?
14 A. It's required by the RCRA Regulations for facilities
15 that are TSD Facilities, so that if they go out
16 of business that we'll be able to cover the cost of
17 clean-up.
18 Q. In the course of your search did you find any written
19 waste analysis plan documents?
20 A. No, I did not.
21 Q. Are those documents required under the Regulations
22 of RCRA?
23 A. Yes, they are.
24 Q. In the course of your search did you find any
25 written personnel training schedules?

1 A. No.

2 Q. All these questions are in relation to the Rathdrum
3 site; I am referring particularly to the Rathdrum
4 site. Did you find any of the three documents I
5 have named for that site?

6 A. No.

7 Q. Did you find any indication that the operators of
8 that site had contacted local officials?

9 A. No.

10 Q. Did you find any indication that the operators or
11 owners of that site contacted local authorities to
12 make contingency requirements?

13 A. No.

14 Q. Did you find in these records any contingency plans?

15 A. No.

16 Q. Did you find in these records any manifests or
17 operating records?

18 A. No.

19 Q. Did you find in these records any closure plans?

20 A. No.

21 Q. Have any of the above-mentioned documents ever been
22 provided to you?

23 A. No.

24 Q. Have you searched your files and the files relating
25 to this case for such documents?

1 A. Yes.

2 Q. What did you find?

3 A. Nothing. One portion of the documents that were

4 not present at the FBI was part of Terry Drexler's

5 files which had been returned by the FBI to him. I

6 did not search that part, but those records were

7 impounded from his Seattle Facility; I should have

8 written it down, these sites that we are talking

9 about today.

10 Q. Those records which you were not able to locate?

11 A. That's right.

12 Q. Relating to Mr. Terry Drexler and his business or

13 site, where?

14 A. Here in Seattle, at the Harbor Island Facility.

15 Q. Is that site involved in any way in this action?

16 A. No.

17 Q. I'd like to refer again to EPA Exhibits 25-Idaho,

18 which is the letter from Jim Harris, Montana.

19 A. Yes.

20 MR. NAVARETTA: O. K.

21 Q. (By Mr. Elsen) How did you happen to come into

22 possession of that document?

23 A. Well, I called him up, I forget when I called him

24 up, but it was sometime in July of '82.

25 Q. Who did you call up?

1 A. I called up the Montana Operations Office. There
2 is two people there, Jim Harris being one of them.
3 I am not sure that I talked to Jim Harris per-
4 sonally, but I talked to one person from the EPA
5 there.
6 Q. Why did you call these people?
7 A. I wanted to see if they had knowledge, such as
8 manifests, of the Drexlers taking wastes from any
9 site in Montana to their facility at Rathdrum.
10 Q. Thank you. Could you explain what a Class I
11 violation is?
12 A. O. K., Class I is an actual or a potential threat
13 to human health or the environment.
14 Q. What is a Class III violation?
15 A. O. K., a Class III is a non-Class I violation, and
16 it's usually referred to as a paper-work type viola-
17 tion, being more minor than a Class I violation.
18 Q. In assessing penalties for alleged violations at
19 the Rathdrum Plant, did you consider the class of
20 violations?
21 A. Yes, I did.
22 Q. Are those indicated on the corrected Penalty Calcula-
23 tion Sheets?
24 A. Yes, they are.
25 Q. What other factors did you use in determining such

1 penalties for alleged violations?

2 A. We had three different factors; one is, also

3 damage and conduct.

4 Q. Could you explain damage?

5 A. O. K. Damage is what the threat is to the human

6 health or environment, major or minor, whatever.

7 Q. The same explanation that you gave earlier, correct?

8 A. Yes.

9 Q. Is the same explanation for conduct that you gave

10 earlier applicable to these alleged violations?

11 A. Yes.

12 Q. Were these factors and categories used by you in

13 determining assessed penalties in this action?

14 A. Could you say that again?

15 Q. Were the three factors, namely class, damage and

16 conduct and various divisions within those factors

17 used by you in determining penalties for this action?

18 A. Yes.

19 Q. Are those calculations done by you on the corrected

20 Penalty Calculation Sheets?

21 A. Yes.

22 Q. Can you tell me why you consider the violations of

23 maintenance of financial assurance records Class I

24 violations?

25 A. Yes.

1 Q. Why is that?
2 A. Because it's in our penalty policy, for one.
3 Q. What is "Our penalty policy"?
4 A. The penalty policy of EPA is a document that
5 classifies the different violations into classes,
6 I, II or III, and also gives some guidance with
7 respect to damage and conduct.
8 Q. And can you say again why you thought the Financial
9 Assurance Record alleged violation is a Class I
10 violation?
11 A. Well, the major reason is that it's in our policy.
12 Q. Is it also in your policy that damage and conduct
13 are major when this provision is violated?
14 A. No.
15 Q. Why do you consider it in this particular case, the
16 damage and conduct to be major?
17 A. For the Damage is that we found hazardous waste on
18 the ground, so therefore it could get into the
19 aquifer, which is a sole source aquifer, and for
20 Conduct is that it was not cleaned up, or attempted
21 to be cleaned up.
22 Q. Do those major -- strike that.
23 Could you tell me why you consider violation
24 of the provision for security to be a Class I viola-
25 tion in this action, including the Rathdrum site?

1 A. O. K. It is a Class I in this case because the
2 general population could easily gain access to
3 the site, and could harm themselves by the hazardous
4 waste, which was easily accessible to unknown
5 parties -- unknowing parties.

6 Q. In your opinion did that situation exist prior to
7 January 1, 1982?

8 A. Prior to January 1, 1982 -- I wouldn't know.

9 Q. Could you tell me why you think disposing without
10 a permit should be classified as a Class I viola-
11 tion in this action, meaning the Rathdrum Plant
12 action?

13 A. It is our policy, EPA policy for disposing without
14 a permit to be a Class I violation.

15 Q. I would like to refer back to the conference held
16 on 6-22-82 between Mr. Bingham and others, including
17 yourself.

18 At that time was Mr. Bingham aware that a
19 RCRA Permit had been applied for in connection with
20 the Rathdrum site?

21 A. No, he was not.

22 Q. Did you tell him anything about the application?

23 A. We talked about what was required for a RCRA Permit,
24 so he had knowledge that a notification was needed,
25 and also a Part A Application was needed.

Handwritten notes in red ink:
He said he
didn't really
know what
was required
for a permit
at that time

1 It was also told to him that the owner and
2 operator both had to sign the Part A Application,
3 and he was not aware that he needed to sign that
4 document.

5 MR. NAVARETTA: Move to strike what was said
6 as being without any proper foundation and also hearsay.

7 Q. (By Mr. Elsen) Where was this meeting held?

8 A. It was held in George Hofer's office in Region Ten.

9 Q. Is that -- where is Region Ten?

10 A. It's in Seattle, in this building.

11 Q. This building -- do you know this building's
12 address?

13 A. 1200 Sixth Avenue, on the 11th Floor.

14 Q. What was Mr. Bingham's reaction, being told that
15 a permit had been applied for?

16 A. At first he didn't have a very strong reaction.
17 He didn't realize the implications of that. He
18 stated that he had no knowledge that he had to
19 sign it. He seemed surprised, and also stated
20 that he had questioned the Drexlers about environ-
21 mental laws and they said they were complying with
22 all the laws.

23 Q. Who else was present at that meeting?

24 A. George Hofer.

25 Q. And --

1 A. (Interrupting) Warren Bingham and myself.

2 Q. In your inspection of 7-20-82 of the site, was it
3 your opinion that the various processing equipment
4 and tanks on that site were maintained to prevent
5 the possibility of leaks?

6 A. No.

7 MR. ELSEN: I have no further questions at
8 this time.

9
10 CROSS EXAMINATION - Continued

11 BY MR. NAVARETTA:

12 Q. Mr. Brown, you have met with Mr. Bingham on more
13 than one occasion?

14 A. Yes, I have.

15 Q. And have you ever found him to be less than candid
16 and forthright?

17 A. No, he has been straightforward.

18 Q. Has he always been cooperative?

19 A. Yes.

20 Q. Has it always been your understanding that the
21 financial arrangements between Mr. Bingham and the
22 Drexlers was primarily one of Mr. Drexlers -- Mr.
23 Bingham having a security interest to protect the
24 money that he had paid to the Drexlers?

25 A. That is true.

1 MR. ELSEN: I would object to that question
2 on the grounds it calls for an expert opinion. Mr.
3 Brown is not an expert in financial matters.

4 I would also move to strike that answer.

5 Q. (By Mr. Navaretta) Have you ever reviewed EPA
6 Exhibit 24, Tacoma?

7 A. I have seen this before.

8 Q. O. K., and that purports to be signed by Wally
9 Drexler?

10 A. Yes.

11 Q. Do you recognize his signature based on your
12 investigation?

13 A. As I say, I couldn't be certain, but --

14 Q. (Interrupting) Do you have any reason to believe
15 under the circumstances under which you have seen
16 that before that was received from Wally Drexler?

17 A. No.

18 Q. Do you have any reason to doubt that?

19 A. No, I don't.

20 Q. Was Mr. Bingham ever -- was counsel ever present
21 at any of the meetings that you had with Mr. Bingham?

22 A. No, no counsel.

23 Q. And with regard to Conduct under the Class I
24 Examiner's Worksheet, I might not have been paying
25 attention, but does culpability, personal culpability

1 involve itself at all in your determination of
2 major or minor in terms of conduct?

3 A. What do you mean by that?

4 Q. Well, you know, the attitude of the person, or
5 you know, the degree of culpability, or whether
6 or not somebody can just be practically an innocent
7 bystander in regard to some of these things or --

8 A. (Interrupting) No, that doesn't come into con-
9 sideration.

10 Q. No consideration is given in the assessment of
11 these penalties to the degree of actual involve-
12 ment that Mr. Bingham had with any of this?

13 A. That's true.

14 Q. And based on your investigation and your knowledge
15 and discussions with Mr. Bingham, wouldn't you
16 characterize Mr. Bingham's actual involvement as
17 almost tangential?

18 A. What do you mean?

19 Q. Well I mean literally almost a bystander to this.

20 A. Well, he didn't seem to be involved as an operator
21 at all.

22 Q. And his -- as far as you know, you have investigated
23 this thoroughly, I am sure; as far as you know, Mr.
24 Bingham's only connection with Rathdrum is this
25 financial arrangement that he entered into with

1 Drexler?

2 A. That's true.

3 MR. NAVARETTA: I have no further questions.

4

5 REDIRECT EXAMINATION

6 BY MR. ELSEN:

7 Q. I have one question. Was Mr. Bingham ever told
8 he could not have counsel at this meeting?

9 A. No, he never was.

10 Q. Was he given an opportunity to obtain and bring
11 counsel to that meeting?

12 A. I can't remember when I talked to him on the phone
13 that I said that he couldn't bring counsel, and I
14 can't remember at the meeting saying that he could
15 have counsel present. It was just an informative
16 type meeting, so counsel was not thought to be
17 necessary.

18 Q. But you never said he could not --

19 A. (Interrupting) No, never said that.

20 MR. ELSEN: I have no further questions.

21 MR. NAVARETTA: Give me just a minute because
22 I want to go through my --

23 RECROSS EXAMINATION

24 BY MR. NAVARETTA:

25 Q. Is there any possibility that any -- let me rephrase

1 that. Why did the FBI have some of these records
2 that you needed to look at?
3 A. It had to do with the Weyerhaeuser Case, which was
4 going on at the same time of our initial investiga-
5 tion.
6 Q. And that FBI investigation, is that the one Mr.
7 Drexler is in prison now as a result of that
8 investigation?
9 A. That's true.
10 MR. NAVARETTA: I have no further questions.
11 MR. ELSEN: Nor do I.
12 (WHEREUPON DEPOSITION WAS CONCLUDED AT 3:50 P.M.)
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3 C E R T I F I C A T E

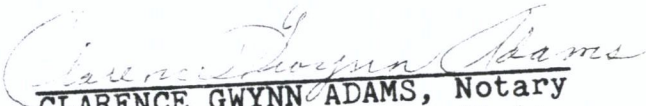
4
5 This is to certify that the attached pro-
6 ceedings before the Environmental Protection Agency
7 in the matter of:

8 DOCKET NO. X83-04-01-3008 and
X83-04-02-3008

9 PLACE: Seattle, Washington

10 DATE: January 17, 1985

11 were held as therein appears, and that this is the
12 original transcript thereof for the files of the
13 Environmental Protection Agency.
14

15 
16 CLARENCE GWYNN ADAMS, Notary
17 Public in and for the State
18 of Washington, residing at
19 Seattle.
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23
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25